

Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, STATE OF)
WASHINGTON, PUYALLUP TRIBE OF)
INDIANS and MUCKLESHOOT INDIAN TRIBE,)

CIVIL NO.

Plaintiffs,)

CONSENT DECREE

vs.)

WEYERHAEUSER COMPANY,)

Defendant.)

1 I. INTRODUCTION

2 The United States of America (“United States”), on behalf of the National Oceanic and
3 Atmospheric Administration (“NOAA”) and the United States Department of the Interior; the State
4 of Washington (the “State”) through the Washington State Department of Ecology; the Puyallup
5 Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, “Plaintiffs”), have filed a
6 complaint in this case against defendant Weyerhaeuser Company (“Defendant”) pursuant to Section
7 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
8 amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D
9 RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A)
10 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the
11 “Decree”) addresses the claims asserted in the Complaint against Defendant for Natural Resource
12 Damages (as defined below) in the Commencement Bay Environment (as defined below).
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15 II. RECITALS

16 A. The United States Department of Commerce, acting through NOAA; the United
17 States Department of the Interior; the Washington State Department of Ecology on behalf of the
18 State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively,
19 the “Trustees” and, individually, a “Trustee”), under the authority of Section 107(f) of CERCLA,
20 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart
21 G, serve as trustees for natural resources for the assessment and recovery of damages for injury to,
22 destruction of, and loss of natural resources under their trusteeship.
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25 B. Investigations conducted by the United States Environmental Protection Agency
26 (“EPA”), the Trustees and others have detected hazardous substances in the sediments, soils and
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1 groundwater of the Commencement Bay Environment, including but not limited to arsenic,
2 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
3 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated
4 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in
5 the marine sediments of Commencement Bay's Hylebos Waterway.
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7 C. The Trustees began assessing natural resource damages in the Commencement Bay
8 Environment in October 1991 by finding that hazardous substances had been released into the
9 Commencement Bay Environment; that public trust natural resources had likely been injured by the
10 releases; that data sufficient to pursue a natural resource damage assessment were available or could
11 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
12 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
13 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
14 In and About the Commencement Bay/Nearshore Tideflats (CB/NT) Superfund Site (October 29,
15 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of
16 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
17 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
18 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
19 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not
20 participate in subsequent stages of the damage assessment, and the Trustees continued the process
21 independently. The Trustees have now completed a series of studies during Phase 2 of the damage
22 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish
23 and salmonids. Results of those studies were published in a series of reports, consisting of
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1 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
2 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998,
3 Fish injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed
4 Casillas, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical
5 Contaminants from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas,
6 Bich-Thuy L. Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein,
7 1998, Effects of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile
8 Chinook Salmon; and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and
9 John E. Stein, 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to
10 the Hylebos Waterway. Based on this research, the Plaintiffs and Defendant (collectively, the
11 “Parties” and, individually, a “Party”) agree that no further natural resource damage assessment is
12 required to effectuate the purposes of this Consent Decree, with respect to Defendant.

15 D. Plaintiffs have filed a complaint (the “Complaint”) pursuant to section 107 of
16 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
17 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,
18 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
19 Commencement Bay Environment, including the costs of assessing the damages.

21 E. Plaintiffs allege in the Complaint that Defendant owns and operates real property or
22 facilities, identified by the Trustees as the WEYERHAEUSER site, from which storm water, surface
23 water runoff, wastewater, other process discharges, and/or groundwater have flowed to the
24 Commencement Bay Environment. Plaintiffs allege that investigations by EPA and others have
25 detected concentrations of hazardous substances in sediments on, in or adjacent those properties or
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1 facilities. Plaintiffs also allege that some of these hazardous substances are found in the sediments
2 of the Commencement Bay Environment.

3 F. Plaintiffs allege that hazardous substances have been or are being released to the
4 Commencement Bay Environment from properties or facilities owned and/or operated by Defendant,
5 and that those hazardous substances have caused injury to, destruction of and loss of natural
6 resources in the Commencement Bay Environment under Plaintiffs' trusteeship, including fish,
7 shellfish, invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs
8 further allege that each of them and the public have suffered the loss of natural resource services
9 (including ecological services as well as direct and passive human use losses) as a consequence of
10 those injuries.
11

12 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator of a facility,
13 and/or (b) a person who at the time of disposal or release of any hazardous substance owned or
14 operated any facility at which such hazardous substances were disposed of, that caused the
15 incurrence of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.
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17 H. Defendant denies all the allegations asserted by Plaintiffs in the Complaint and this
18 Consent Decree.
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20 I. Although the Trustees have initiated but not yet completed a natural resource damage
21 assessment for the Commencement Bay Environment, the Trustees have developed and analyzed
22 information sufficient to support a settlement that is fair, reasonable and in the public interest.
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24 J. To facilitate resolving natural resource damage claims, the Trustees developed a
25 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
26 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage-assessment
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1 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
2 developed an estimate of the amount of injury to natural resources that had occurred as a result of
3 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
4 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
5 time, discounted to the current year. The Trustees used the term discounted ecological service
6 acre-years (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
7 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
8 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
9 restoration sufficient to compensate for the loss of 1526.77 DSAYs.
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12 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
13 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
14 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
15 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
16 liable for all injuries to natural resources that have resulted from the contamination. As a
17 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
18 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
19 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
20 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
21 existing information from the files of EPA, the Washington State Department of Ecology, and local
22 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
23 to the contamination.
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26 L. To insure that all PRPs had an equal opportunity to be informed of and to offer their
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1 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
2 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
3 revised the report based upon the comments received, and made it available to PRPs in final form.
4

5 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
6 among the various industrial sites along the Hylebos Waterway. As a result of their allocation
7 process, the Trustees allocated a total of 14.017 DSAYs to the Defendant. The Trustees also
8 allocated a total of \$47,441.99 in damage assessment costs relating to the Hylebos Waterway to the
9 Defendant.
10

11 N. The Trustees quantified natural resource damages in their Hylebos Waterway report
12 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing
13 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees
14 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand
15 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration
16 projects. The cash damages equivalent of the 14.017 DSAYs allocated to Defendant totals
17 \$728,884.00. When combined with the damage assessment costs allocated to the Defendant, the
18 dollar value of the Trustees' claim asserted against Defendant totals \$776,325.99. The Trustees have
19 agreed to settle their natural resource damage claims against Defendant associated with the
20 Commencement Bay Environment for cash payments totaling \$776,325.99 in natural resource
21 damages and damage assessment costs. Defendant has agreed to pay the Trustees the identified sum
22 in return for the Trustees' covenants not to sue Defendant for Natural Resource Damages as
23 provided below in Paragraph 15.
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26 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or
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occurrences alleged in the Complaint.

P. Plaintiffs and Defendant agree, and this Court by entering this Decree finds, that this Decree has been negotiated by the Parties in good faith; that settlement of this matter will avoid prolonged and complicated litigation between the Parties; and that this Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
AND DECREED:

III. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The Parties may not challenge the terms of this Decree or this Court's jurisdiction to enter and enforce this Decree.

IV. PARTIES BOUND

2. This Decree is binding upon the United States, the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and upon Defendant and its heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, will in no way alter the status or responsibilities of Defendant under this Decree.

V. DEFINITIONS

3. Unless otherwise expressly provided, terms used in this Decree that are defined in

1 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
2 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
3 attached appendix, the following definitions will apply:

4 a. “Commencement Bay Environment” means the waters of Commencement
5 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,
6 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point.
7 These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St.
8 Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
9 Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is
10 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended
11 by the EPA, including the B&L Landfill, and areas affected by releases of hazardous substances
12 within the Commencement Bay Nearshore/Tideflats Superfund Site.

13 b. “Commencement Bay Restoration Account” means the Commencement Bay
14 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
15 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
16 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

17 c. “DSAYs” means discounted ecological service acre-years, the metric
18 established by the Trustees to determine the scale of Natural Resource Damages liability associated
19 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
20 injury to, destruction or loss of natural resources giving rise to liability.

21 d. “Defendant” means Weyerhaeuser Company.

22 e. “Natural Resource Damages” means damages, including costs of damage
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1 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
2 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
3 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
4 natural resources resulting from releases of hazardous substances or discharges of oil to the
5 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
6 Waterway.

8 f. “Parties” mean the United States, the State of Washington, the Puyallup Tribe
9 of Indians, the Muckleshoot Indian Tribe and Weyerhaeuser Company.

10 g. “Plaintiffs” mean the United States, the State, the Puyallup Tribe of Indians,
11 and the Muckleshoot Indian Tribe.

12 h. “Trustees” mean the United States Department of Commerce, acting through
13 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
14 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

16 VI. GENERAL PROVISIONS

17 4. The Complaint states claims upon which relief may be granted.

18 5. Nothing in this Consent Decree shall be construed as an admission of liability by the
19 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.

21 VII. PAYMENT OF NATURAL RESOURCE DAMAGES

22 AND DAMAGE ASSESSMENT COSTS

23 6. Within 30 days of entry of this Decree, Defendant will pay to the Trustees
24 \$728,884.00 for Natural Resource Damages. This payment will be made by a certified check made
25 payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Natural
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1 Resource Restoration Account.

2 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums
3 totaling \$47,441.99 in damage assessment costs. These sums shall be paid in the following amounts
4 and particulars:

5
6 Trustee: National Oceanic and Atmospheric Administration
7 Amount: \$38,271.38

8 Trustee: U.S. Department of the Interior
9 Amount: \$6,398.44

10 Payments to NOAA and the U.S. Department of the Interior shall be made by certified checks made
11 payable to "U.S. Department of Justice" bearing the notation "Weyerhaeuser Company -
12 Commencement Bay Assessment Costs," and delivered to U.S. Attorney's Office, Western District
13 of Washington, Attn: Financial Litigation Unit, 700 Stewart Street, Suite #5220, Seattle, WA 98101.
14 Any payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall
15 be credited on the next business day. Defendant shall provide at least five days notice to the
16 Financial Litigation Unit before making the transfer.

17
18 Payments to the other Trustees shall be made by certified checks, bearing the notation
19 "Weyerhaeuser Company - Commencement Bay Assessment Costs," in the amounts indicated and
20 made payable and addressed as follows:

21
22 Trustee: State of Washington
23 Amount: \$789.52
24 Payee: State of Washington/Department of Ecology
25 Address: State of Washington
26 Department of Ecology
27 Attention: Cashiering Section
28 P.O. Box 5128
 Lacey, WA 98503-0210

1 Trustee: Puyallup Tribe of Indians
2 Amount: \$1,806.29
3 Payee: Puyallup Tribe of Indians
4 Address: Mr. William Sullivan
5 Environmental Protection Department
6 Puyallup Tribe of Indians
7 3009 E. Portland Ave.
8 Tacoma, WA 98404

9 Trustee: Muckleshoot Indian Tribe
10 Amount: \$176.37
11 Payee: Muckleshoot Indian Tribe
12 Address: Mr. Rob Otsea
13 Office of the Tribal Attorney
14 Muckleshoot Indian Tribe
15 39015 172nd Avenue S.E.
16 Auburn, WA 98002

17 8. At the time of each payment Defendant will send notice that payment has been made
18 to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). Such notice
19 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action
20 number.

21 VIII. FAILURE TO COMPLY WITH CONSENT DECREE

22 9. Interest on Late Payments. If Defendant fails to make any payment under
23 Paragraphs 6 and 7 by the required due date, interest shall be assessed at the rate specified for
24 interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. §
25 9507, compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The
26 applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is
27 subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance
28 through the date of payment.

1 10. Stipulated Penalties.

2 a. If any amounts due under Paragraphs 6 and 7 are not paid by the required
3 date, Defendant will be in violation of this Decree and, as a stipulated penalty, in addition to the
4 interest required by Paragraph 9, will increase the financial contributions it makes under this
5 Consent Decree to fund habitat restoration actions by paying the Trustees \$1,000 per violation per
6 week that such payment is late. After the second week that such payment is late, the stipulated
7 penalty shall apply to each additional day that the payment is late.

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9 b. Stipulated penalties are due and payable within thirty (30) days of the date
10 of the demand for payment of the penalties by the Trustees. All payments to the Trustees under this
11 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will
12 be deposited in the Commencement Bay Restoration Account.

13
14 c. At the time of each payment, Defendant will send notice that payment has
15 been made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions).
16 This notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the
17 civil action number.

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19 d. Penalties will accrue as provided in this Paragraph regardless of whether the
20 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties
21 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due
22 and will continue to accrue through the date of payment. Nothing in this Decree prevents the
23 simultaneous accrual of separate penalties for separate violations of this Decree.

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25 11. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse
26 Plaintiffs for all costs of such action, including but not limited to costs of attorney time.

1 12. Payments made under this Section are in addition to any other remedies or sanctions
2 available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this
3 Decree.
4

5 13. Notwithstanding any other provision of this Section, Plaintiffs may, in their
6 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
7 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment
8 as required by Section VII or from performance of any other requirement of this Consent Decree.
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10 14. The Trustees may use sums paid as stipulated penalties under Paragraph 10 to pay
11 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore
12 Commencement Bay natural resources.

13 IX. COVENANT NOT TO SUE BY PLAINTIFFS

14 15. Except as specifically provided in Section X (Reservations of Rights) below,
15 Plaintiffs covenant not to sue or to take administrative action against Defendant pursuant to Section
16 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water
17 Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.
18 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon
19 receipt by the Registry of the Court and by each of the Trustees of all payments required by
20 Paragraphs 6 and 7 of Section VII. This covenant not to sue is conditioned upon the satisfactory
21 performance by Defendant of its obligations under this Decree. This covenant not to sue extends
22 only to Defendant and its heirs, successors, and assigns, and does not extend to any other person.
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25 X. RESERVATIONS OF RIGHTS

26 16. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant
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1 with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in
2 Paragraph 15. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree
3 is without prejudice to, all rights against Defendant with respect to:

- 4 a. liability for failure of Defendant to meet a requirement of this Decree;
- 5 b. liability for costs of response incurred or to be incurred by Plaintiffs;
- 6 c. liability for injunctive relief or administrative order enforcement under Section 106 of
- 7 CERCLA, 42 U.S.C. § 9606, and
- 8 d. criminal liability to the United States or State.

9 10 XI. REOPENERS

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12 17. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve,
13 and this Consent Decree is without prejudice to, the right to institute proceedings against Defendant
14 in this action or in a new action for:

- 15 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent
- 16 Decree; and
- 17 b. Additional claims for Natural Resource Damages if conditions, factors or information
- 18 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this
- 19 Consent Decree, are discovered that, together with any other relevant information, indicates that
- 20 there is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude
- 21 significantly greater than was known, at the time of entry of this Consent Decree, which is
- 22 attributable to the Defendant.
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25 XII. COVENANT NOT TO SUE BY DEFENDANT

26 18. Defendant covenants not to sue and agrees not to assert any claims or causes of action

1 against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe
2 or their contractors or employees, for any civil claims or causes of action relating to Natural
3 Resource Damages.

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5 XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

6 19. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
7 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
8 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
9 demands, and causes of action they each may have with respect to any matter, transaction, or
10 occurrence relating in any way to the Commencement Bay Environment against any person not a
11 Party hereto.
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13 20. The Parties agree, and by entering this Consent Decree this Court finds, that
14 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
15 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
16 70.105D.040(4)(d) for Natural Resource Damages.
17

18 21. Defendant agrees that it will notify the Trustees and the United States in writing no
19 later than sixty (60) days before bringing a suit or claim for contribution for Natural Resource
20 Damages. Defendant also agrees that it will notify the Trustees and the United States in writing
21 within ten (10) days of service of a complaint or claim upon Defendant relating to a suit or claim for
22 contribution for Natural Resource Damages. In addition, Defendant will notify the Trustees and the
23 United States within ten (10) days of service or receipt of any Motion for Summary Judgment and
24 within ten (10) days of receipt of any order from a court setting a case for trial for matters related
25 to this Decree.
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21. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource Damages, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 15 and 18.

XIV. NOTICES AND SUBMISSIONS

23. Whenever notice is required to be given or a document is required to be sent by one Party to another under the terms of this Decree, it will be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice requirement of the Decree for Plaintiffs and Defendant.

As to the United States and as to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(DJ # 90-11-2-1049)

As to NOAA:

Robert A. Taylor
NOAA Office of General Counsel GCNR/NW
7600 Sand Point Way NE

1 Seattle, WA 98115-0070

2 As to the United States Department of the Interior:

3 Jeff Krausmann
4 U.S. Fish & Wildlife Service
5 510 Desmond Dr. SE, Suite 102
6 Lacey, WA 98503-1263

7 As to the State:

8 Craig Thompson
9 Toxics Cleanup Program
10 State of Washington
11 P.O. Box 47600
12 Olympia, WA 98504-7600

13 As to the Puyallup Tribe of Indians:

14 Bill Sullivan
15 Environmental Department
16 Puyallup Tribe of Indians
17 3009 E. Portland Ave.
Tacoma, WA 98404

18 As to the Muckleshoot Indian Tribe:

19 Mr. Rob Otsea
20 Office of the Tribal Attorney
21 Muckleshoot Indian Tribe
22 39015 172nd Avenue S.E.
Auburn, WA 98002

23 As to Defendant:

24 Weyerhaeuser Company
25 Attn.: Ms. Jennifer Hale, Environmental Manager
26 Environment Health & Safety – Standards, WTC-2G2
27 P.O. Box 9777
28

1 Federal Way, Washington 98063-9777

2 With a copy to

3
4 Weyerhaeuser Company Law Department, CH 1J28

5 Attn.: Vice President and General Counsel

6 P.O. Box 9777

7 Federal Way, Washington 98063-9777

8 XV. EFFECTIVE DATE

9 24. The effective date of this Consent Decree shall be the date upon which this Consent
10 Decree is entered by the Court, except as otherwise provided herein.

11 XVI. RETENTION OF JURISDICTION

12 25. This Court will retain jurisdiction over this matter for the purpose of interpreting and
13 enforcing the terms of this Decree.

14 XVII. INTEGRATION/APPENDICES

15 26. This Decree and its appendices constitute the final, complete, and exclusive
16 agreement and understanding with respect to the settlement embodied in this Decree. The Parties
17 acknowledge that there are no representations, agreements, or understandings relating to the
18 settlement other than those expressly contained in this Decree. The following appendices are
19 attached to and incorporated into this Consent Decree:

20 Appendix A is the Order Directing the Deposit of Natural Resource Damages into the
21 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8,
22 1993).

23 XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

24 27. This Decree will be lodged with the Court for a period of not less than thirty (30)
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1 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold
2 their consent if the comments regarding the Decree disclose facts or considerations that indicate this
3 Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Decree
4 without further notice.
5

6 28. If for any reason this Court declines to approve this Decree in the form presented, this
7 agreement may be voided at the sole discretion of any Party, and the terms of the agreement may
8 not be used as evidence in any litigation between the Parties.
9

10 XIX. SIGNATORIES/SERVICE

11 29. The Assistant Attorney General for the Environment and Natural Resources Division
12 of the United States Department of Justice and each undersigned representative of the State, the
13 Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that he or she is
14 authorized to enter into the terms and conditions of this Decree and to execute and bind legally the
15 Party that he or she represents to this document.
16

17 30. Defendant agrees not to oppose entry of this Decree by this Court or to challenge any
18 provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer
19 supports entry of the Decree.
20

21 31. Defendant will identify on the attached signature page the name and address of an
22 agent who is authorized to accept service of process by mail on behalf of it with respect to all
23 matters relating to this Decree. Defendant agrees to accept service in that manner and to waive the
24 formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any
25 applicable local rules of this Court, including but not limited to service of a summons.
26

27 XX. FINAL JUDGMENT

28

1 32. Upon approval and entry of this Decree by the Court, this Decree will constitute the
2 final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the
3 Muckleshoot Indian Tribe, and Defendant. The Court finds that there is no just reason for delay and
4 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
5

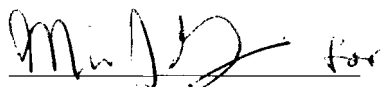
6
7 SO ORDERED THIS ____DAY OF _____2008.

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10 _____
United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Weyerhaeuser Company

3 FOR THE UNITED STATES OF AMERICA

5 Date: 3/20/2003



Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

11 FOR THE STATE OF WASHINGTON

14 Date: _____

16 Date : _____

Assistant Attorney General
State of Washington

20 FOR THE PUYALLUP TRIBE OF INDIANS

22 Date: _____

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Weyerhaeuser Company

3 FOR THE UNITED STATES OF AMERICA
4
5

6 Date: _____

Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

11 FOR THE STATE OF WASHINGTON
12
13

14 Date: 12/18/07

Director U S U U
Department of Ecology

16 Date : _____

Assistant Attorney General
State of Washington

20 FOR THE PUYALLUP TRIBE OF INDIANS
21
22

23 Date: _____
24
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Weyerhaeuser Company

3 FOR THE UNITED STATES OF AMERICA
4
5

6 Date: _____

Ronald J. Tenpas
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

11 FOR THE STATE OF WASHINGTON
12
13

14 Date: _____

16 Date : 12/11/07

Assistant Attorney General
State of Washington

20 FOR THE PUYALLUP TRIBE OF INDIANS
21
22

23 Date: _____
24
25
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Weyerhaeuser Company

3 FOR THE UNITED STATES OF AMERICA
4

5 Date: _____
6

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

10
11 FOR THE STATE OF WASHINGTON
12

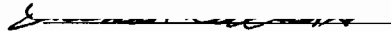
13 Date: _____
14

15
16 Date : _____
17

Assistant Attorney General
State of Washington

18
19
20 FOR THE PUYALLUP TRIBE OF INDIANS
21

22 Date: 1/9/08
23



1 FOR THE MUCKLESHOOT INDIAN TRIBE

2
3 Date: 01-31-08

4
5
6
7 FOR WEYERHAEUSER COMPANY

8
9 Date: 10/26/2007

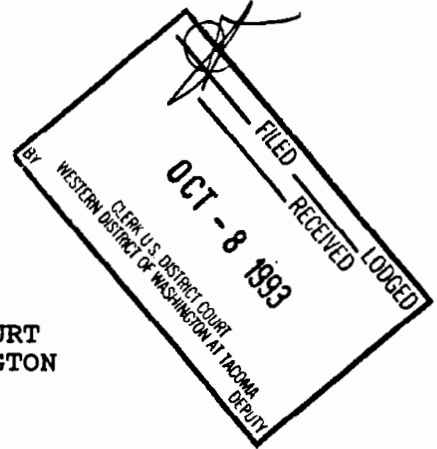
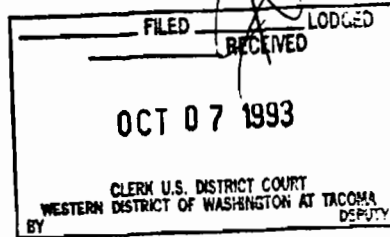
10
11 Sara Schreiner Kendall
12 Vice President
13 Environment, Health & Safety

14 Agent authorized to receive service of process by mail on behalf of Weyerhaeuser Company with
15 respect to all matters relating to this Decree:

16
17 Weyerhaeuser Company
18 Attention: Corporate Secretary
19 Mail to: PO Box 9777
20 Mail Stop: CH 1N27
21 Federal Way, Washington 98063-9777
22 Ship-to: 33663 Weyerhaeuser Way South
23 Mail Stop: CH 1N27
24 Federal Way, Washington 98003
25
26
27
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APPENDIX A

Hon. Robert J. Bryan



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
ENTERED
ON DOCKET

OCT 8 1993

By Deputy

UNITED STATES OF AMERICA,
ON BEHALF OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,
THE UNITED STATES DEPARTMENT OF
THE INTERIOR, AND THE NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION;
STATE OF WASHINGTON;
PUYALLUP TRIBE OF INDIANS;
MUCKLESHOOT INDIAN TRIBE;

Plaintiffs,

v.

PORT OF TACOMA

Defendant

Civil No. C93-5462B

ORDER DIRECTING THE
DEPOSIT OF NATURAL
RESOURCE DAMAGES INTO
THE REGISTRY OF THE
COURT

This Order is entered in furtherance of a Consent Decree
in the above captioned matter between Plaintiffs the United
States of America, State of Washington, Puyallup Tribe of Indians
and Muckleshoot Indian Tribe and Defendant the Port of Tacoma
("Settling Defendant"). Under the Consent Decree, Settling
Defendant has agreed, among other matters, to pay \$12,000,000

ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 1

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

9

1 (twelve million dollars), in installments as identified in the
2 Consent Decree, to the Natural Resource Trustees (National
3 Oceanic and Atmospheric Administration of the U.S. Department of
4 Commerce, the U.S. Department of the Interior, the Washington
5 Department of Ecology (on behalf of the Washington Department of
6 Fisheries, the Washington Department of Natural Resources, and
7 the Washington Department of Wildlife), the Puyallup Tribe of
8 Indians, and the Muckleshoot Indian Tribe) in settlement of
9 Settling Defendant's liability for Natural Resource Damages
10 caused by releases of hazardous substances from property owned,
11 managed or operated by Settling Defendant within the Commencement
12 Bay Environment, as defined in the Consent Decree. This Order
13 addresses handling and investment of those funds by the Registry
14 of the Court.

15 Pursuant to Rule 67 of the Federal Rules of Civil
16 Procedure, 28 U.S.C. § 2041, and Local Rule GR 6, and in
17 accordance with the terms of the Consent Decree, it is hereby
18 1. ORDERED that Settling Defendant, following entry of the
19 Consent Decree and in accordance with the payment schedules
20 established therein, pay to the Clerk of the Court all sums
21 specified in paragraph 51.b. of the Consent Decree, which sums
22 constitute recovery for Natural Resource Damages and Future
23 Trustee Assessment Costs, as defined in the Consent Decree; and
24 it is

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ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 2

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 2. ORDERED that Settling Defendant shall make the
2 aforementioned payments by checks made payable to the Clerk of
3 the Court, bearing the notation Civil Action No. C93-5462B
4 (W.D. Wash.), which checks shall be sent to:

5 Office of the United States Attorney
6 3600 SeaFirst Fifth Avenue Plaza
7 800 Fifth Avenue
8 Seattle, Washington 98104

9 The U.S. Attorney shall immediately deposit such funds with the
10 Registry of the Court. The Settling Defendant shall cause
11 photocopies of each check and of any transmittal letter
12 accompanying the check to be sent to: Chief, Environmental
13 Enforcement Section, Department of Justice, P.O. Box 7611, Ben
14 Franklin Station, Washington, D.C. 20044; and to Robert A.
15 Taylor, NOAA Damage Assessment and Restoration Center, 7600 Sand
16 Point Way NE, BIN C15700, Seattle, WA 98115; and it is

17 3. ORDERED that an account shall be established in the
18 Registry for payments received in the above captioned matter and
19 for such other payments as may be received from time to time in
20 connection with restoration and protection of the ecosystem of
21 the Commencement Bay watershed, and that the account shall be
22 titled Commencement Bay Natural Resource Restoration Account
23 ("Commencement Bay Restoration Account"); and it is

24 4. ORDERED that the Clerk of the Court shall administer the
25 funds so received as follows:
26

27 ORDER DIRECTING DEPOSIT OF
28 NATURAL RESOURCE DAMAGES - 3

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

1 provides a comparable level of security and earnings potential,
2 which application may be acted upon by the Court without notice
3 to or consent by Settling Defendant; and it is

4 7. ORDERED that the Clerk shall prepare quarterly reports on
5 the status and activity of the Commencement Bay Restoration
6 Account showing payments received, disbursements made, income
7 earned, maturity dates of securities held, and principal balance,
8 and shall distribute the reports to counsel for the United
9 States; and it is

10 8. ORDERED that funds in the Commencement Bay Restoration
11 Account shall remain in the Registry until further order of this
12 Court; and it is

13 9. ORDERED that the Natural Resource Trustees shall establish
14 such decision making procedures regarding expenditures of funds
15 from the Commencement Bay Restoration Account as they deem
16 appropriate. Applications for orders for disbursements from the
17 Commencement Bay Restoration Account shall be made by the United
18 States on behalf of the Natural Resource Trustees. The
19 application shall be supported by a certification of the Natural
20 Resource Trustees that their determination to make such
21 disbursement was in compliance with said decision making
22 procedures and is consistent with the terms of the Consent Decree
23 and other applicable law. Such applications may be acted upon by
24 the Court without notice to or consent by Settling Defendant.
25 Any of the Natural Resource Trustees may petition the Court for
26

1 review of a decision by the United States to seek or not to seek
2 an application for an order for disbursement, provided that the
3 party or parties seeking review have complied with any dispute
4 resolution provisions adopted as part of the decision making
5 procedures referred to above; and it is

6 10. ORDERED that counsel for the United States shall serve as
7 the point of contact for the Clerk on behalf of the Natural
8 Resource Trustees, and shall distribute copies of the reports
9 referred to in paragraph 7 of this Order to the other Natural
10 Resource Trustees; and it is

11 11. ORDERED that the Clerk is authorized and directed by this
12 Order to deduct for maintaining funds in the Registry Account the
13 fee as authorized in the Federal Register Vol. 56, No. 213 at
14 page 56356 (November 4, 1991); and it is

15 12. ORDERED that a certified copy of this Order shall be
16 served upon the Clerk of this Court.

17
18 Dated 8 October 1993

Hon. Robert J. Bryan, Judge
United States District Court
Western District of Washington

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ORDER DIRECTING DEPOSIT OF
NATURAL RESOURCE DAMAGES - 6

U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044